

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on January 25, 2001 at 3:05 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 269, 1/22/2001; SB 276,
1/22/2001
Executive Action: SB 56; SB 57; SB 269

HEARING ON SB 269

Sponsor: SENATOR WALT MCNUTT, SD 50, Sidney

Proponents: John Alke, Montana Dakota Utilities
Gloria Paladichuk, City of Glendive

Bob Nelson, Montana Consumer Council

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.5}

SENATOR WALT MCNUTT, SD 50, Sidney, stated that the purpose of the bill was to eliminate the dates in current law as a result of SB 390 that requires Montana Dakota Utilities (MDU) to develop a plan for deregulation and to implement the same plan to deregulate. Those dates are 2002-2004. MDU is a multi-state energy company that provides electricity in the eastern part of the state. The bulk of their generation is located in other states. Only 25% of their electrical system is located in Montana. At the time SB 390 was enacted, there was a strong feeling that the federal government was going to usher in on the scene a much quicker stance of mandatory requirements for deregulation. Since that time, that hasn't happened and we've seen other things take place in the energy business. Since they are in a different grid than the northwest, they haven't been impacted and the rates are less than someone would experience in an open-market situation in the northwest. There's no practical reason, at this time, to continue with this requirement for MDU. If required to do that, the rate payer's cost would be quite high.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 4.5}

John Alke, Montana Dakota Utilities, submitted written testimony, **EXHIBIT (ens20a01)**.

Gloria Paladichuk, City of Glendive, voiced her groups' support for SB 269 and urged a "do pass" vote. She submitted written testimony from the mayors of Wolf Point and Miles City, **EXHIBIT (ens20a02), EXHIBIT (ens20a03)**.

Bob Nelson, Montana Consumer Council, replied that multi-jurisdictional utilities face significant challenges. Utilities, such as MDU, would face potential inefficiencies and unintended consequences while trying to operate as a restructured utility. Those inefficiencies and consequences could be translated into costly consequences for the utilities. This bill does not foreclose the option for MDU consumers and this legislature as restructuring develops.

Opponents' Testimony: None**Questions from Committee Members and Responses:*****{Tape : 1; Side : A; Approx. Time Counter : 20}***

SENATOR MIKE HALLIGAN asked if there was old language in SB 390 that would set up the process of going with choice in five or ten years. **John Alke** replied that no, there was not. However, the reality is that in 1997, the deadlines actually in the bill do not fit with MDU right now. If this bill passes and five years from now the federal government states we have to deregulate, a plan could be put together that would comply with the state and federal act. The transition schedules would be done on an interstate basis. It would be close to what's been done, although the dates would be different. **SENATOR HALLIGAN** questioned whether MDU was allowed to defer clients until they decide to go to choice, assuming that the Public Service Commission (PSC) or someone else would play a role in approving the transition plan. **Mr. Alke** replied that would have to happen because even without the dates, they can't change the tariffs control or regulated retail operations without the PSC's approval. Nothing could occur, in terms of implementing restructuring, without making a file to the PSC.

SENATOR DON RYAN wanted clarification whether MDU customers should be denied the benefits of deregulation that the rest of Montana will enjoy. **SENATOR MCNUTT** stated that was correct.

Closing by Sponsor:

SENATOR MCNUTT stated the importance of the bill and asked for a "do pass" vote from the committee.

HEARING ON SB 276

Sponsor: **SENATOR KEN TOOLE, SD 27, Helena**

Proponents: Don Judge, Montana State AFL-CIO
Gary Feland, Public Service Commission

Opponents: Mike Manion, Montana Power Company
John Alke, Montana Dakota Utilities
Russ Cravens, Qwest

Opening Statement by Sponsor:***{Tape : 1; Side : A; Approx. Time Counter : 25}***

SENATOR KEN TOOLE, SD 27, Helena, stated that the idea for this bill came about because he attended a meeting of the PSC, at which there was discussion about the proceeds of the sale of the distribution system. During that discussion, an MPC representative indicated that it was their position that the sale was a stock transfer rather than an asset transfer and therefore would fall under the jurisdiction of the PSC. Particularly, the ability of the PSC to take the proceeds of the sale and make some allocation between stockholders and rate payers. This is the sale of what has been a regulated monopoly. The correlation to private property rights isn't exactly similar. There's been a historical agreement with MPC that they had a monopoly franchise in exchange for protection from competition and a reasonable rate of return. This bill tries to determine what it would mean, in terms of potential capital gains tax to the state, if this transaction was analyzed as a stock sale.

Proponents' Testimony:

Don Judge, Montana State AFL-CIO, voiced support of SB 276 and read a resolution that was sent to all the legislators. His group feels the bill goes towards reestablishing solvability of public confidence in the direction that public utility deregulation is taking in Montana. It offers opportunity for oversight and an elected commission of Montanans to determine whether the sale of that public utility is in the best interest of consumers. Electric generation and natural gas deregulation will have a huge impact on Montana's economy, work force, local communities, and divisions of public services. It's only right to provide a mechanism for determining what that impact will be, for allowing public participation in that process, and to litigate negative impacts through a process applied with law. He encouraged a "do pass" recommendation.

{Tape : 1; Side : B; Approx. Time Counter : 4}

Gary Feland, Public Service Commission, supported SB 276 with amendments. The PSC wanted to strike "supply" and add "utility" on line 19, and strike subsection three entirely.

Opponents' Testimony:

Mike Manion, Montana Power Company, submitted written testimony, **EXHIBIT** (ens20a04).

John Alke, Montana Dakota Utilities, stated the importance that the committee understand that the PSC does not have authority over sales or transfers of utility property. The PSC's statutes were adopted in 1913 and when they were adopted, the Montana

Legislature specifically didn't adopt what was called the certificate system. In many states, a utilities entry, exit, and the sale of its assets are controlled by a certificate system. The utility must obtain a certificate from the PSC and if it wants to sell its business, it must transfer that certificate to the PSC and receive the PSC's permission. Montana simply didn't give the PSC certificate or asset transfer authority. The lack of authority has been so clear for so many years, that in 1948 the Commission stated "This Commission does not have authority over transfers and sales of utilities," **EXHIBIT (ens20a05)**. This bill doesn't define public interest.

Russ Cravens, Qwest, noted the importance of the impacts this bill would have on Montana. He urged that everything possible should be done in Montana to encourage investment in the infrastructure bringing the information economy here. The legislation may be designed to build a fence to keep money in Montana, but he suggested that the practical effect is that it would build a barrier to keep investment opportunity away.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 23}

SENATOR STEVE DOHERTY asked about the constitutionality of subsection three. **Bob Nelson** replied that the Montana Consumer Council doesn't believe that subsection three is unconstitutional. Many states do allow the commissions to allocate gain on the sale of regulated utility property. In Montana, he was aware of a district court case which allowed that treatment.

SENATOR DOHERTY questioned whether the PSC would support the legislation if subsection three was taken out of the bill. **Gary Feland** stated that was correct. **SENATOR DOHERTY** inquired why the PSC thought it was necessary to take out subsection three, given what the Montana Consumer Council noted. **Mr. Feland** contended that the implications of trying to attract investment in Montana are jeopardized by somebody having the authority over how profits should be distributed. It would be detrimental to investor's capital. **SENATOR DOHERTY** wanted to clarify that the PSC was looking at this bill as a measure of public service regulation, as opposed to something that may have been talked about in general. **Mr. Feland** challenged that he had voted for the bill in its entirety, however he was outvoted. The Commission only got a consensus by taking subsection three out of the bill. Montana simply doesn't have the luxury of jeopardizing any extra capital right now. **SENATOR DOHERTY** stated he was looking at the language saying that the Commission may allocate, not require, some or

all. With that degree of flexibility, those concerns for the stockholders would be kept in mind when making a decision about what to do. He asked whether adding some, none, or all for the allocation as an amendment would give any greater degree of comfort. **Mr. Feland** cited that the reason this bill is before the committee is because that's what the PSC voted to do with the proceeds of that sale prior to the legislative session.

SENATOR DOHERTY inquired about how the sponsor would feel if subsection three was stricken from the bill as proposed in the PSC's amendments. **SENATOR TOOLE** indicated that without subsection three, the bill means nothing. It's a critical piece of the bill and he would strongly resist that amendment.

SENATOR COREY STAPLETON inferred whether the power to allocate some or all of the gain on the acquisition or transfer of a utility would be the job of the legislative rather than the executive branch of the government. **SENATOR TOOLE** believed this was an executive branch function and fits in with the responsibilities of the PSC. **SENATOR STAPLETON** respectfully disagreed with the sponsor.

SENATOR MIKE TAYLOR was concerned that it would be very difficult to attract investors with the dialect in this bill. **SENATOR TOOLE** declared that this bill talks about real money that is currently on the table. Assuming the deal closes, the money that is there now in the gain from the sale of the distribution system could be around \$100 million. He didn't believe in the idea of presenting a bad image to the public outside Montana and scaring away investment because the situation deals with regulated assets.

SENATOR ALVIN ELLIS postulated that if the legislature was to decide to take the assets of a company that they couldn't do the same for another company. **SENATOR TOOLE** indicated that was correct. He emphasized that a public utility in a regulated environment is unique. This company was built and has benefitted for years on a monopoly franchise and was essentially a contract with the people of Montana. **SENATOR ELLIS** noted that by law, that company was guaranteed a profit that didn't vary a great deal on the amount of money that was invested. **SENATOR TOOLE** stated that the company wasn't guaranteed, but shielded from aggressive competition by their monopoly status. Certainly, the risk they faced on the market was far less than the average market for early adventure in the state of Montana because of regulation. **SENATOR ELLIS** replied that the provisions of that arrangement also protected the public. **SENATOR TOOLE** answered that was correct. **SENATOR ELLIS** elaborated that the PSC had, as an obligation, to look at the investment capital and the cost of

generating and delivering that power and then determine how much a corporation could make, on that basis. **SENATOR TOOLE** declared that there was a rate of return that the company was "eligible" to make. He assumed the rate of return of a public utility couldn't go out and make 100%, but rather was around 8-12%.

SENATOR ELLIS suggested that the company wasn't entitled to the growth over time. **SENATOR TOOLE** indicated that the public utility is entitled to the extent that there is a gain, as well as the general public.

SENATOR HALLIGAN questioned the history of the statutes. **Bob Nelson** clarified that there is a split of authority on many of these issues. With respect to the certification requirements, it is true that Montana was unique in that most states set up a certificate system that is required of utilities wishing to initiate service. Montana does have authority indicating that, although there is no certificate system that applies for entry in service, once utility service is being provided, certain service obligations must be met. There is at least one district court case with respect to cessation of service. **SENATOR HALLIGAN** asked for a recommendation on how to interpret the public interest in subsection three. **Mr. Nelson** answered that the general rule usually applied is that the right to the benefits of a sale or transfer borrow the risk of loss. What commissions typically do, when they have the authority to allocate gain, is to look at the particular situation, see what parts of the operation the rate payers have been responsible for and the burdens they have encountered versus the shareholders, and try to balance those risks and benefits.

SENATOR RYAN wondered how the investment was protected for those people who put into the investor-owned utility and why the risk wasn't very great, in follow-up with **SENATOR ELLIS'** question.

SENATOR TOOLE proclaimed that the standard for recovering their investment through regulated environment is less stringent in the market. Many investments that may have been disallowed in the competitive market ended up in the rate base, with Colstrip 3 as an example. The comparison of the regulated environment versus the market are vastly different.

SENATOR MIKE TAYLOR noted that the rate payers have also enjoyed a very low rate. **SENATOR TOOLE** agreed that was indeed the case.

Closing by Sponsor:

SENATOR TOOLE expressed his happiness on hearing that MPC wants to take the entire gain from the sale of this system to the stockholders. That has profound implications, in terms of capital gains, the state, and what happens to rate payers. Small

customers are heading for a train wreck. If what happens over the next five years is a doubling to tripling of residential electric rates, and MPC successfully scoops all the gain in premium off the table, it will add insult to injury. He urged the committee to seriously consider the bill.

EXECUTIVE ACTION ON SB 56

Motion: SENATOR MCNUTT moved that AMENDMENT SB005604.ATE, EXHIBIT (ens20a06), DO PASS.

Discussion:

SENATOR MCNUTT voiced his objections to having another hearing on SB 56. This amendment allows for the same amortized and non-amortized costs included in charges from BPA to large customers. Since those rates already include the fees for conservation as they do with co-ops, the amendment is appropriate.

SENATOR HALLIGAN wanted Debbie Smith to give some testimony on the amendment. Ms. Smith commented that the size of the large industrial USB commitment for MPC customers is approximately \$3 million of their \$8.5 million budget. With \$3 million of the MPC large customers, \$2.8 million from the co-ops claimed in debt service for 1999, and another few hundred thousand dollars from ENI and Columbia Falls Aluminum, approximately \$6.5 million of the state's total \$13 million USB budget is at risk and would not be invested in the new programs.

Vote: Motion carried 10-1 with Doherty voting no.

Motion/Vote: SENATOR MCNUTT moved that SB 56 DO PASS AS AMENDED. Motion carried 10-1 with Doherty voting no.

EXECUTIVE ACTION ON SB 57

Motion: SENATOR JOHNSON moved that AMENDMENT SB005701.ATE, EXHIBIT (ens20a07), DO PASS.

Discussion:

SENATOR JOHNSON stated that the amendment takes the ending dates to the end of the calendar year because most appropriations are on a calendar year.

Vote: Motion carried unanimously.

Motion: SENATOR JOHNSON moved that SB 57 DO PASS AS AMENDED.

Discussion:

SENATOR TOM ZOOK had hoped to have more information gathered for another amendment. Part of the USB services going to some areas just isn't right. He had wanted to get a total figure on everything being spent.

SENATOR JOHNSON was concerned about SENATOR ZOOK's position and opted to wait on the bill. SENATOR ZOOK stated there was no need to hold the bill, but he would gather the remainder of the information.

SENATOR TAYLOR said he would support the bill, but had problems with parts of it.

SENATOR BEA MCCARTHY noted her concern about the percentage of money that is diverted into a website, on a grant from MPC, rather than other programs.

Vote: Motion carried 9-1 with Zook voting no. SENATOR HALLIGAN was excused.

EXECUTIVE ACTION ON SB 269

Motion/Vote: SENATOR MCNUTT moved that SB 269 DO PASS. Motion carried 10-0. SENATOR HALLIGAN was excused.

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. MACK COLE, Chairman

MISTI PILSTER, Secretary

MC/MP

EXHIBIT (ens20aad)